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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/087,647
Filing Date: March 01, 2002
Appellant(s): COHEN ET AL.

Ido Tuchman, Reg. No. 45,924
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/30/07 appealing from the Office action mailed 4/11/06

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claims 1-21 and 24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall et al. (US 2002/0087665) (hereinafter Marshall) in view of official notice.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20020087665	Marshall et al.	7-2002

.(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-8, 18-21 and 24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. .

Claims 1, 6 and 18 fail to fall within a statutory category of invention. They are directed to a program itself (i.e. “a [software] system … comprising: a data resolution service … and means for rebinding the binding expressions") (see specification, page 13-18), not a process occurring as a result of executing the program, a machine programmed to operate in accordance with the program or a manufacture structurally and functionally interconnected with the program in a manner which enables the program to act as a computer component and realize its functionality. It’s also clearly not directed to a composition of matter. Therefore they are rejected as being non-statutory under 35 USC 101.

Claims 2-5, 7-8 and 19-20 depend from claims 1, 6 and 18, respectively, and do not address this issue and are thus also rejected as being non-statutory under 35 USC 101.

Claim 21 is not limited to statutory embodiments. The claimed medium is not limited to statutory embodiments, instead being defined as including both statutory embodiments (e.g., claim 22 “the tangible media comprises a magnetic disk”) and non-

statutory embodiments (e.g., claim 24 "the tangible media comprises a propagating signal"). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Claim 24 explicitly recites a non-statutory embodiment (i.e. "a propagating signal"). Accordingly the claim is not limited to statutory subject matter and is therefore non-statutory.

Process claims 9-17 were also analyzed under 35 USC 101. It is recognized that, in order to be statutory, a process claim must be 1) tied to a particular machine or apparatus, or 2) it transforms a particular article into a different state or thing. In re Bilski, 88 USPQ2d 1385 (2008). It is also recognized that a general purpose computer may be converted into a particular computer through the operation of software on the computer. In re Alappat, 31 USPQ2d 1545 (1994). For the instant invention, the specification makes clear that the rebinding process is carried out via software operating on a computer (the rebinding process algorithm is illustrated in figures 4A-4B). As such, the process is tied to a particular machine, thus meeting the Bilski test.

Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Marshall et al. (US 2002/0087665) (hereinafter Marshall).

As per claim 1, Marshall teaches the invention as claimed, including a system for rebinding a binding expression to a new network resource, wherein a data specification

describes a resource required by the binding expression (paragraphs 0018 “an abstract resource ID”, 0040), the system comprising:

a data resolution service configured to discover network resources that satisfy the data specification (paragraphs 0018 “connect requested (or required) resources … by resolving an abstract resource ID”, 0022, 0057); and

means for rebinding the binding expression to the new network resource when the data specification changes (paragraphs 0022 “dynamic binding of resources via resource ID”, 0037, 0046).

As per claim 2, Marshall teaches the invention as claimed, including the system of claim 1, wherein the data specification is computed at least partially from received data (paragraphs 0038 “As resources are defined, unique specifiers may be stored", 0040).

As per claim 3, Marshall teaches the invention as claimed, including the system of claim 1, wherein the means for rebinding receives announcements of changes in a currently bound network resource (paragraph 0043 “communicate to X’s MOI to change its state to “out of service””, 0058).

As per claim 4, Marshall teaches the invention as claimed, including the system of claim 3, wherein the data resolution service communicates the announcements to the means for rebinding (paragraph 0058 ”communicate to X’s MOI to change its state to “out of service””).

As per claim 5, Marshall teaches the invention as claimed, including the system of claim 1, wherein the means for rebinding initiates rebinding according to programmer-specified criteria in response to the announcements (paragraph 0022, 0058 "execute appropriate dependency rules").

As per claims 6, 7, and 8, Marshall teaches the invention as claimed, including the system of claims 1, 3, and 5, wherein a resource descriptor describes a currently bound network resource (paragraphs 0038, 0043 "the old ID", 0058).

As per claim 9, Marshall teaches the invention as claimed, including a method for rebinding a binding expression to an appropriate network resource in a network, the binding expression being associated with a data specification describing the data at the binding expression (paragraphs 0018 "an abstract resource ID", 0040), the network including a current network resource (paragraph 0031), and the network resources including at least one resource property (paragraph 0038), the method comprising:

obtaining a list indicating potential appropriate network resources and selecting an appropriate network resource from the list (paragraphs 0018 "several interchangeable instances of a particular resource", 0022, 0057); and

rebinding the binding expression to the appropriate network resource (paragraphs 0022 "dynamic binding of resources via resource ID", 0037, 0046).

As per claim 10, Marshall teaches the invention as claimed, including the method of claim 9, further comprising receiving an announcement of a change in the current network resource (paragraphs 0043, 0058 “execute appropriate dependency rules”).

As per claim 11, Marshall teaches the invention as claimed, including the method of claim 10, further comprising requesting the list upon receipt of the announcement (paragraphs 0056-58, 0079 "resource pools may be managed … entities are used interchangeably on a dynamic basis").

As per claim 12, Marshall teaches the invention as claimed, including the method of claim 9, further comprising determining whether the current network resource is no longer appropriate (paragraph 0058 “out of service”).

As per claim 13, Marshall teaches the invention as claimed, including the method of claim 9, further comprising evaluating the data specification upon a request for a current value of the binding expression (paragraphs 0043, 0057 “The resource resolution may be given the primary resource ID … to retrieve the requested resource").

As per claim 14, Marshall teaches the invention as claimed, including the method of claim 9, further comprising requesting the list upon a change in the value of the data specification (paragraphs 0022, 0043, 0057).

As per claim 15, Marshall teaches the invention as claimed, including the method of claim 9, further comprising obtaining an access port for the appropriate network resource (paragraph 0057 “mapping the resource ID to the IP address and port”).

As per claim 16, Marshall teaches the invention as claimed, including the method of claim 9, further comprising if an error occurs, rebinding the binding expression to an error source (paragraphs 0022, 0037, 0046, 0058 “change its state to “out of service””).

As per claim 17, Marshall teaches the invention as claimed, including the method of claim 9, wherein selecting the appropriate network resource further comprises determining the appropriate network resource according to programmer-specified criteria (paragraph 0057 “a resource type ID may be used to retrieve a resource resolution mechanism”).

As per claim 18, Marshall teaches the invention as claimed, including a system for rebinding a binding expression to an appropriate network resource in a network, the binding expression being associated with a data specification describing the data required at the binding expression (paragraphs 0018 “an abstract resource ID”, 0040), the network including a current network resource (paragraph 0031), and the network resources including at least one resource property (paragraph 0019 “customerX.featureY”), the system comprising:

a data resolution service configured to provide a list indicating potential appropriate network resources (paragraphs 0018 “connect requested (or required) resources … by resolving an abstract resource ID”, 0022, 0057); and

a port manager configured to provide an access port to the appropriate network resource such that the binding expression rebinds to the appropriate network resource via the access port (paragraphs 0022 “dynamic binding of resources via resource ID”, 0037, 0046, 0057).

As per claim 19, Marshall teaches the invention as claimed, including the system of claim 18, further comprising a binding module configured to select the appropriate network resource from the list indicating potential appropriate network resources (paragraphs 0018 “When several interchangeable instances … are available … the algorithm for selecting among them”, 0022, 0057).

As per claim 20, Marshall teaches the invention as claimed, including the system of claim 19, wherein the data resolution service sends an announcement to the binding module when a change in the resource property of the current network resource occurs (paragraph 0043, 0058 “change its state to “out of service””).

As per claim 21, Marshall teaches the invention as claimed (see e.g. the rejection of claim 9), implemented as a computer program product embodied in a tangible media

comprising computer readable program codes coupled to the tangible media (paragraph 0034 "the present invention may include hardware, [and] software").

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall et al. (US 2002/0087665) (hereinafter Marshall) in view of official notice.

As per claims 22-25, Marshall teaches the invention as claimed, including the computer program product of claim 21, but does not disclose the tangible media comprises a magnetic disk, an optical disk, a propagating signal, or a random access memory device.

Official notice is taken that each of a magnetic disk, an optical disk, a propagating signal, and a random access memory device were known in the art and used to store or transmit program code.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to embody Marshall's program code (paragraph 0034 "software") in any of a magnetic disk, an optical disk, a propagating signal, and a random access memory device. Those of ordinary skill in the art would have been motivated to do so as a known and obvious means of storing and/or transmitting Marshall's program code (paragraph 0034 "software").

(10) Response to Argument

Claim 1

In the par. bridging pp. 9 and 10, the appellants state:

> Marshall appears to relate to a method and system for enabling resources to be defined, tracked, verified, resolved and managed statically and dynamically wherein resource management is performed explicitly and consistently throughout the system regardless of resource type. Marshall, para. 1. Marshall briefly mentions dynamic binding of resources using resource ID, version ID and other identifiers independent of their physical location in the context of preventing clashes and inconsistencies between resources. Marshall, para. 20-22. Importantly, however, Marshall does not mention or suggest rebinding a binding expression to a new network resource, wherein a data specification describes a resource required by the binding expression.

As will be discussed in detail below, it is the examiner's position that those of ordinary skill in the art would have recognized the claimed "rebinding a binding expression to a new network resource" to describe changing or updating the connection between a 'binding expression' and its resource as a result of some changed condition (e.g. a change to a "data specification"). It would have also been understood that such a re-binding could be performed statically or dynamically.

Starting in the first full par. on pg. 10, the appellants state:

> In support of the Examiner's position, the Office Action offers paragraphs 18 and 40 of Marshall as evidence of teaching rebinding a binding expression to a new network resource, wherein a data specification describes a resource required by the binding expression. Turning to the specific paragraphs cited in the Office Action: …
>
> …
>
> As discussed above, this paragraph [Marshall par. 0018] lacks teaching or suggestion of a binding expression, much less rebinding the binding expression to a new network resource. …
>
> …
>
> Again, the Appellants find no teaching or suggestion in the above paragraph [Marshall par. 0040] of rebinding the binding expression to a new network resource.

The examiner respectfully disagrees. The terms "binding expression" and "data specification" are very broad. Specifically, the claims do not define a particular form for either, nor do the claims recite any detail of the interaction between the two. The appellants' specification indicates that “a data specification describes a resource required" (pg. 3, lines 16-19 as originally filed), and accordingly “a data specification” is reasonably anticipated by Marshall’s “abstract resource ID, type ID, and version ID [or] Other identifiers” which respectively describe the resource with a unique ID, a type of resource or the version of that resource. Marshall’s system uses these ‘data specifications’ to find and subsequently establish (or re-establish when the ID has been changed) a connection to a resource (see e.g. par. [0057] "Connections to remote nodes may be retrieved by mapping the resource ID to the IP address and port to be accessed”)

Further, the appellants' specification describes the binding expression as “configured to contain data from one of the data sources” (pg. 6, lines 13-15) and goes on to state “the binding expression [provides] data from a particular data source” (pg. 6, lines 20-21). This describes a connection type software object (data structure and associated access methods) which collects manages data sent to and from the resource. Thus, those of ordinary skill in the art would have understood the broadest reasonable interpretation of the claimed binding expression to be anticipated by the connection formed by Marshall's system, or more particularly by the machine readable code used to represent the connection (e.g. par. 0018. "software to connect to ... resources"; also see par. 0034 “software, control logic or other components used to

support connections") for example note par. [0057] which discloses "Connections to remote nodes may be retrieved by … opening a TCP/IP connection to it, and returning the protocol handler as a proxy for the remote node"). In this paragraph the returned 'proxy' is a software object which temporarily stores (buffers) data that is retrieved from or is to be sent on the "TCP/IP connection" to the resource, and thus provides the functionality of a binding expression as described in the appellants' specification (e.g. pg. 6, lines 9-30).

Accordingly, those of ordinary skill in the art would have recognized Marshall's "abstract resource ID, type ID, and version ID [or] Other identifiers" as a data specification describing a resource required by the binding expression (see e.g. par. 0018 "connect to requested (or required) resources ... by resolving an abstract resource ID ..."; par. [0057] "mapping the resource ID to the IP address and port to be accessed"). Further, those of ordinary skill in the art would have understood the connection made based on the resolving of this data source (par. 0018 "connect to requested (or required) resources"; par. [0057] "opening a TCP/IP connection to [the resource], and returning the protocol handler as a proxy for the remote node") to anticipate the claimed "binding expression" (as discussed above).

Finally those of ordinary skill would have understood the disclosed dynamic "load balancing, [and] fault-tolerant redundancy" to indicate a re-binding of the connections. For example, when one resource is over burdened or has failed the connected resource would be swapped for another of the "several interchangeable instances" (par. 0018, 0022). This is more explicitly disclosed, for example, in par. 0061 ("resource

relationships may be altered"). Marshall's relationships refer to the connections formed between the resources and altering such a connection reasonably anticipates a 'rebinding' as claimed.

Starting in the 3rd full par. on pg. 11, the appellants state:

> Paragraph 58 of Marshall contains no teaching or suggestion of rebinding the binding expression to a new network resource. In this paragraph, Marshall mentions that if a resource becomes out of service, the system notifies resource dependencies that the resource is 'out of service" Paragraph 61 of Marshall merely states that a resource manager may be applied to service. There is no mention or suggestion of rebinding the binding expression to a new network resource in either cited paragraph.
>
> The Examiner also refers to paragraph 100 of Marshall. The paragraph states, in part, "The present invention facilitates the removal of old functionality where deprecated resources may be gradually removed from the system." In the next paragraph more detail of removing depreciated resource is provided. Marshall states, "At step 714, new entities which may need the type of functionality provided by "X" and "Y" may be defined to use "Y"." Marshall, para. 100 (emphasis added) . Thus, Marshall describes creating new entities bound to new resources, not rebinding the binding expression to a new network resource. Marshall, Fig. 7, item 714.

The examiner respectfully disagrees. Marshall's notification of a resource failure (i.e. "a resource becomes out of service") at least coupled with the disclosure of "fault-tolerant redundancy" in par. 0018 indicates a rebinding of the "out of service" resource. Further in addition to stating "that a resource manager may be applied to service" par. 0061 discloses that "resource relationships may be altered". As discussed above, those of ordinary skill in the art would have understood these "resource relationships" to refer to the bindings (i.e. connections) made by Marshall's system (e.g. par. 0018 "software to connect to ... resources") and 'altering' them would constitute a rebinding.

In the first full par. on pg. 12, the appellants state:

> Furthermore, the resource identification described in Marshall is vastly different from the recited data specification of claim 1. While paragraph 40 of Marshall relates to resource identification to uniquely distinguish one resource from other resources, the data specification of claim 1 "describes a resource required by the binding expression." Thus, the Appellants respectfully submit that Marshall does not teach or suggest a data specification describes a resource required by the binding expression, as recited in claim 1.

The examiner respectfully disagrees. It is not clear how the appellants believe Marshall's "resource identification" to be distinct from data to "describe a resource". Namely an identification describes the thing it is identifying. Accordingly, those of ordinary skill in the art would have recognized these concepts as analogous. Further, it is clear that Marshall's "resource identification" identifies required resources (e.g. par. 0018 "connect to requested (or required) resources … by resolving an abstract resource ID").

Starting in the 3rd full par on pg. 12, the appellants state:

> Paragraph 18 of Marshall, repeated above, mentions that an algorithm may be used to select from among several available interchangeable instances of a particular resource. However, this paragraph does not discuss a process of discovering network resources that satisfy a data specification. Thus, the Appellants respectfully submit that paragraph 18 of Marshall does not provide a requisite teaching to anticipate the above-quoted element of claim 1.
>
> Paragraph 22 discusses various resource identifiers, but does not teach or suggest a data resolution service configured to discover network resources that satisfy the data specification. …
>
> …
>
> Similarly, paragraph 57 of Marshall discusses benefits of employing a resource ID and version ID to retrieve the requested resource, but fails to teach or suggest a data resolution service configured to discover network resources that satisfy the data specification.

The examiner respectfully disagrees. For example, par. 0018 discloses “resolving an abstract resource ID …”. Those of ordinary skill would have recognized this as providing data resolution (e.g. “resolving an abstract resource ID”) and thus a data resolution service. Further this data resolution service allows for the discovery of and connection to network resources (i.e. connect to ... resources ... by resolving an abstract resource ID"). Accordingly, par. 0018 of Marshall would have been understood to disclose the claimed “data resolution service configured to discover network resources that satisfy the data specification.”

Similarly, par. 0022 discloses “dynamic binding, combined with [a] resource resolution mechanism”, and par. 0057 discloses “The resource resolution mechanism may be given the primary resource ID and version ID and ... retrieve[s] the requested resource." Those of ordinary skill would have understood both paragraphs to further disclose the claimed limitation. Also see par. 0044 which discloses “A resource manager may use the unique specifier to find the requested resource and return a reference to the requested resource”. Here a data resolution service (the resource manager) is configured to discover network resource (it finds the requested resource) that satisfies the data specification (the resource is mapped to the unique specifier) as required by claim 1.

In the last full par. on pg. 13, the appellants state:

> The Appellants respectfully submit that paragraph 57 of Marshall specifically states, “According to another example of the present invention, a resource type ID may be used to retrieve a resource resolution mechanism." Marshall, para. 57 (emphasis added) . It is clear that the resource ID of Marshall is one-to-one mapping

> to the resource itself. "Connections to remote nodes may be retrieved by mapping the resource ID to the IP address and port to be accessed, opening a TCP/IP connection to it, and returning the protocol handler as a proxy for the remote node." Marshall, para. 57. Thus, Marshall lacks any notion of a discovery process to discover network resources that satisfy the data specification.

The examiner respectfully disagrees. The claim recites "a data resolution service configured to discover network resources that satisfy the data specification". This does not preclude a one-to-one mapping of the data specification to the network resources. Specifically a data specification which uniquely describes a resource still describes the resource. Further, those of ordinary skill in the art would understand the claimed discovery process to merely describe finding and providing means to connect to an identified resource. Accordingly, the act of "mapping the resource ID to the IP address" anticipates the broadest reasonable meaning of a 'discovery process'. Specifically, Marshall takes a resource ID and maps it to (i.e. discovers) a resource at a particular IP address by first mapping the ID to the IP address (also see par. 0056 "use a resource identifier to determine whether a resource is present"). Further, although apparently not required by the claim language, par. 0018 Marshal clearly discloses a resource identification (e.g. "resource type ID") which provides a one-to-many mapping (i.e. "When several interchangeable instances of a particular resource are available"; also see the discussion of claim 9 below).

Starting in the 1st full par. on pg. 14 the appellants state:

> The Appellants respectfully submit that paragraph 22 of Marshall, repeated above, does not mention or suggest rebinding a binding expression to a new network resource when a data specification changes.
>
> …

> It is noted that operations of the resource management described in paragraph 37 of Marshall do not include rebinding a binding expression to a new network resource when a data specification changes.
>
> …
>
> Similarly, the Appellants respectfully submit that the resource management system described in paragraph 46 of Marshall does not teach or suggest rebinding a binding expression to a new network resource when a data specification changes.

The examiner respectfully disagrees. Each of these paragraphs refer to Marshall's dynamic binding and/or resource management (e.g. par. 0022 “The dynamic binding of resources via resource ID”; par. 0037 “Dynamic resource management … may take place after deployment”; par. 0046 “varying relationships … may be established”). Those of ordinary skill in the art would have recognized this dynamic binding as disclosing the ability to change connection to a resource (re-bind) at run time as a result of a change to the resource identification.

More specifically see par. 0019 which discloses Marshall’s system “facilitates and accommodates changes … in the resource identifiers”. Those of ordinary skill in the art would have understood this to disclose that a change to the resource identifier (i.e. the data specification) would be accommodated by updating the connection to the resource (i.e. rebinding). For example, par. 0019 discloses that when “CustomerX.featureY” [is] renamed to “shared.featureY” [u]sers who continue to request customerX.featureY may transparently receive shared.featurey”. This functionality is detailed par. 0057 which states “If a resource ID is an alias, it may be mapped to the primary ID of the resource”. In this case “CustomerX.featureY” becomes an alias for “shared.featureY” and the resource resolution mechanism is updated (i.e. the data specification is changed) so

that connections are changed (i.e. binding expressions are re-bound) to the newly defined resource (i.e. “shared.featureY”).

Claims 2-5

The appellants’ arguments regarding these claims refer to and rely on the arguments addressed above in conjunction with claim 1.

Claim 6

In the 4th full par. on pg. 15, the appellants state:

> Unlike claim 1, claim 6 recites, “means for rebinding the binding expression to the new network resource when the resource descriptor changes." The Examiner fails to provide any evidence in the record that Marshall teaches or suggest this claim element. Moreover, the Appellants respectfully submit that Marshall does not mention or suggest rebinding a binding expression to a new network resource when a resource descriptor changes.

Respectfully, neither the claims nor the specification provide an explanation of the distinction between the claimed data specification and a resource descriptor other than to indicate that “a data specification describes a resource required by the binding expression ... and a resource descriptor describes a currently bound network resource” (from the claim). Note that the only reference to a 'resource descriptor' in the specification is on pg. 3 at lines 16-23 and substantially repeats the claim language. Based on this disclosure the only distinction which can be identified is the state of the binding to the reference. Specifically a 'data specification' appears to describe a resource which is needed but has not yet been bound, while a resource descriptor describes a resource which has been bound. This interpretation is further supported by

the fact that in the appellants description of the claims 1 and 6 (pg. 3 1st full par. and pg. 5, 1st full par.) both claim 1's "means for rebinding … when the data specification changes" and claim 6's "means for rebinding … when the resource descriptor changes" are indicated as supported/disclosed at pg. 8, lines 3-6.

Given this interpretation the limitation Marshall discloses a "means for rebinding … when the resource descriptor changes" for example in par. 0019 which discloses "Users who continue to request customerX.featureY [a previously bound 'resource descriptor'] may transparently receive shared.featureY [a required 'data specification']". Additionally, the appellants are referred to the more detailed discussion presented above in conjunction with claim 1.

Further, note for example par. 0043 which discloses "If resource IDs are changed, the old ID may be remembered as an alias of the new, primary ID". In this aspect of Marshall's disclosure the "the old ID" describes a connected resource (i.e. the data specification) while "the new, primary ID" describes a new resource that is required (i.e. resource descriptor). The disclosed 'aliasing' indicates that upon the change, connections to "the old ID" are rebound to "the new, primary ID", thus meeting the claimed limitation (see e.g. par. 0019 "Users who continue to request customerX.featureY may transparently receive shared.featurey").

Claims 7-8

The appellants' arguments regarding these claims refer to and rely on the arguments addressed above in conjunction with claim 6.

Claim 9

In the last full par. on pg. 16, the appellants state:

> Claim 9 further recites, "obtaining a list indicating potential appropriate network resources." The Examiner argues that this claim element can be found in Marshall. In support of the Examiner's position, the Office Action cites paragraphs 18, 22, and 57 of Marshall. FOA, pp. 4.
>
> Paragraph 18 of Marshall, repeated above, mentions that an algorithm may be used to select from among several available interchangeable instances of a particular resource. However, this paragraph does not discuss a process of obtaining a list indicating potential appropriate network resources. Thus, the Appellants respectfully submit that paragraph 18 of Marshall does not provide a requisite teaching to anticipate the above-quoted element of claim 9.
>
> Paragraph 22 of Marshall discusses various resource identifiers, but does not teach or suggest obtaining a list indicating potential appropriate network resources. Similarly, paragraph 57 of Marshall discusses benefits of employing a resource ID and version ID to retrieve the requested resource, but fails to teach or suggest obtaining a list indicating potential appropriate network resources.

The examiner respectfully disagrees. The claim only recites

> obtaining a list indicating potential appropriate network resources; [and] selecting an appropriate network resource from the list"

The claim does not recite any particular structure for the list or any particular means of obtaining the list. Accordingly Marshall's "several interchangeable instances of a particular resource" anticipate the claimed "list indicating potential … resources" and "selecting among them" anticipates the claimed "selecting an appropriate … resource" (0018). More specifically, in order for Marshall's system to 'select among' the several interchangeable instances a "list" (of some description) of those instances must first be returned to the selector. Further see pars. 0079-0080 which disclose further details of Marshall's list functionality (e.g. par 0079 "a set of homogenous entities … may be

placed into a pool and allocated … as needed"; par. 0080 "return a reference to the resource's pool manager")

The remainder of the appellants' arguments regarding this claim, refer to and rely on the arguments addressed above in conjunction with claim 1.

Claims 10-17

The appellants' arguments regarding these claims refer to and rely on the arguments addressed above in conjunction with claim 9.

Claim 18

In the last full par. on pg. 19, the appellants state:

> Claim 18 further recites, "a port manager configured to provide an access port to the appropriate network resource such that the binding expression rebinds to the appropriate network resource via the access port." Paragraphs 22, 37, 46 and 57 of Marshall were offered by the Office Action as teaching this claim element. FOA, pp. 6. The Appellants respectfully disagree with the Examiner's interpretation of Marshall.

The examiner respectfully disagrees. For example par. 0057 explicitly discloses providing an access port to the appropriate network resource ("mapping the resource ID to the IP address and port to be accessed") and thus, meets the claimed limitation. Accordingly those of ordinary skill in the art would have recognized Marshall discloses rebinding a binding expression (as discussed in detail in conjunction with claim 1) via an access port (see par. 0057).

The appellants' remaining arguments regarding this claim repeat or refer to and rely on arguments addressed above in conjunction with claims 1 and 9

Claims 19-20

The appellants' arguments regarding these claims refer to and rely on the arguments addressed above in conjunction with claim 18.

Claim 21

The appellants' arguments regarding this claim, refer to and rely on the arguments addressed above in conjunction with claim 9.

Claims 22-25

The appellants' arguments regarding these claims refer to and rely on the arguments addressed above in conjunction with claim 21.

Further it is noted that claims 22-25 have been newly rejected as obvious over Marshall in view of Official Notice. While the grounds of rejection have changed the examiner asserts the reasoning presented in the rejection has not changed. Specifically, the claims were previously rejected with a citation to Fig. 1 and the statement that "the claimed media are well known to be within the class of tangible storage media".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Jason Mitchell/

Examiner, Art Unit 2193

Conferees:

/Tuan Q. Dam/
Tuan Q. Dam
Supervisory Patent Examiner, Art Unit 2192

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/wendy garber/
Director, Technology Center 2100